

REMARKS

I. Claim Amendments

By the foregoing amendments to the claims, claims 32, 36, 42, and 50 have been amended; claims 33-35 and 44-46 have been canceled; and new claims 54-59 have been added.

In particular, claims 32 and 42 have been amended to recite particular sialyzed carbohydrates, by incorporating the subject matter of claims 34 and 44, respectively. Claims 32 and 42 have been further amended to clarify that the sialyzed carbohydrates are incorporated in a food and/or dietetic composition, as supported at least at page 8, lines 23-26, of the present specification.

Claim 50 has been amended by replacing the term “probe tube food” with the phrase “food administered via a feeding tube.” Applicants note that the present application is a National Stage entry of a PCT application written in German. The PCT application uses the term “Sondennahrung” which was translated to the English term “probe tube food.” The term “Sondennahrung” is a well-known term describing a food which is administered to a patient via a feeding tube. Submitted herewith for the Examiner’s reference are pages from Wikipedia explaining the term “Sondennahrung” and “feeding tube.” See also page 9, lines 2-4 of the present specification (noting that the compositions may be administered “into the stomach as a probe food”). Applicants submit that the phrase “food administered via a feeding tube” is fully supported in the application as filed.

New dependent claims 54-59 recite particular embodiments of claims 32 and 42, and are supported throughout the application as filed. For example, sialyzed carbohydrates attached to various carriers are supported at least at page 8, lines 10-16, and dietetic and food compositions that are “not human milk” are supported at least at page 8, lines 29-31.

Additional amendments have been made to clarify the claim language and place the claims into better conformance with U.S. patent practice. These amendments are merely editorial in nature and are not intended to change the scope of the claims or any elements recited therein.

The amendments to the claims, including cancellation of claims, have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled

subject matter. No new matter has been added, and entry of the foregoing amendments to the claims is respectfully requested.

II. Response to Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 32-53 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

In particular, the Examiner has stated that the structure of the compounds encompassed by the general formulas recited claims 32 and 42 is not clear. The Examiner also indicated that claim 33 includes a broad limitation together with a narrower limitation that falls within the scope of the broad limitation. Finally, according to the Examiner the term “probe tube food” (claim 50) is not clear.

Not to acquiesce to the rejection, but to advance prosecution, Applicants have amended the claims as set forth above. In particular, formulas (I) and (II) have been deleted and independent claims 32 and 42 now recite specific sialyzed carbohydrates. In addition, claim 33 has been canceled, and new claims 55, 56, 58 and 59, directed to carriers, do not recite polymers, biopolymers, peptides and proteins in a single Markush group. Claim 50 as amended herein recites “food administered via a feeding tube” rather than “probe tube food.”

The claims as amended particularly point out and distinctly claim the subject matter Applicants regard as the invention. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

IV. Response to Claim Rejections Under 35 U.S.C. §§ 102 and 103

A. Claims 32-35, 37-40, 52 and 53 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Iosa (BE 1006598).

B. Claims 42-45 and 50 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Gilbert (WO 00/46379).

C. Claims 34, 36, 41, 51 and 52 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Iosa in view of Gilbert.

These rejections are respectfully traversed.

Not to acquiesce to the rejection, but to advance prosecution, the claims have been amended to recite that the sialyzed carbohydrates are incorporated in a food and/or dietetic composition.

Iosa teaches pharmaceutical compositions that are commonly administered parenterally, e.g. intravenously. The compositions comprise the active agent dissolved or suspended in a carrier such as water, buffered water, saline, PBS and the like. The compositions may contain pharmaceutically acceptable auxiliary substances as required to approximate physiological conditions, such as pH adjusting and buffering agents, tonicity adjusting agents, wetting agents, detergents and the like. (See, e.g., page 42, lines 1-9 of the reference). However, in contrast to the present claims, Iosa does not teach a composition comprising sialyzed carbohydrates incorporated in a food and/or dietetic composition. Similarly, Gilbert does not teach administering a composition comprising sialyzed carbohydrates incorporated in a food and/or dietetic composition. Thus, neither Iosa nor Gilbert teach each and every element of the rejected claims.

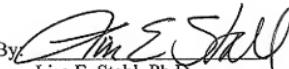
In addition, an ordinary artisan would not have been motivated to include sialyzed carbohydrates in a food and/or dietetic composition because Iosa and Gilbert, taken alone or in combination, do not suggest the suitability of including the sialyzed carbohydrates in a food and/or dietetic composition. Furthermore, there is no teaching in the cited references supporting the proposition that a person of ordinary skill in the art would have considered it desirable, or even suitable, to administer any of the sialyzed carbohydrates described in the references in the form of a food and/or dietetic composition in order to treat an infection in a patient. Thus, the cited references do not teach or suggest the subject matter of the present claims.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions related to this response, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney at the below-listed telephone number concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

By: 
Lisa E. Stahl, Ph.D.
Registration No. 56,704

BACON & THOMAS PLLC
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314-1176
703.683.0500

Date: November 26, 2010